

8 August 2025

The Registrar
Planning and Environment List
Victorian Civil and Administrative Tribunal
55 King Street
MELBOURNE VIC 3000

S87A Application – Major Cases List
Planning Permit No.665/2016/B
1 Brighton Road, St Kilda

Dear Sir / Madam

We act on behalf of *Twenty20 Property Group Pty Ltd*, the permit holder in the above-mentioned matter.

Our client seeks to amend Planning Permit No. 665/2016/B pursuant to Section 87A of the *Planning and Environment Act 1987*. It is proposed to increase the building height by two storeys and include two levels of SDA housing (community care accommodation) at Levels 1 and 2, while further reducing the car parking. Further details of the proposed amendments are outlined at Section 2.

We are seeking to have the matter listed on the Major Cases List.

To assist the Tribunal in their consideration of this matter, we provide the following:

- A completed Application for Review to the Major Cases List Form with associated attachments (online); and
 - Copy of the Certificate of Title;
 - Copy of the existing planning permit and a tracked-changes version of same;
 - Current extension of time for planning permit;
 - Current endorsed plans and associated documents;
 - Copy of the VicPlan Planning Property Report;
 - Copy of the VCAT decision relating to the original permit;
 - Planning submission (following);
 - Architectural plans prepared by Bruce Henderson Architects (dated 6 August 2025);
 - List of changes prepared by Bruce Henderson Architects;
 - Traffic advice dated 28 July 2025 prepared by Traffix Group;
 - Amended Waste Management Plan prepared by RB Waste Consulting Service;
 - SDA Consultant Advice Notice prepared by Lume Access dated 20 May 2025;
 - Advice from NDIS-registered SDA provider, Project Friday, dated 5 August 2025;
 - Acoustic Advice provided by Acoustic Logic dated 24 July 2025; and

- Amended Sustainable Management Plan prepared by GIW Environmental Solutions dated 30 July 2025.

— Payment of the requisite fee.

Should you have any queries or should you require any further information, please do not hesitate to contact the undersigned on 9429 3111 or at alicem@ratio.com.au

Yours sincerely

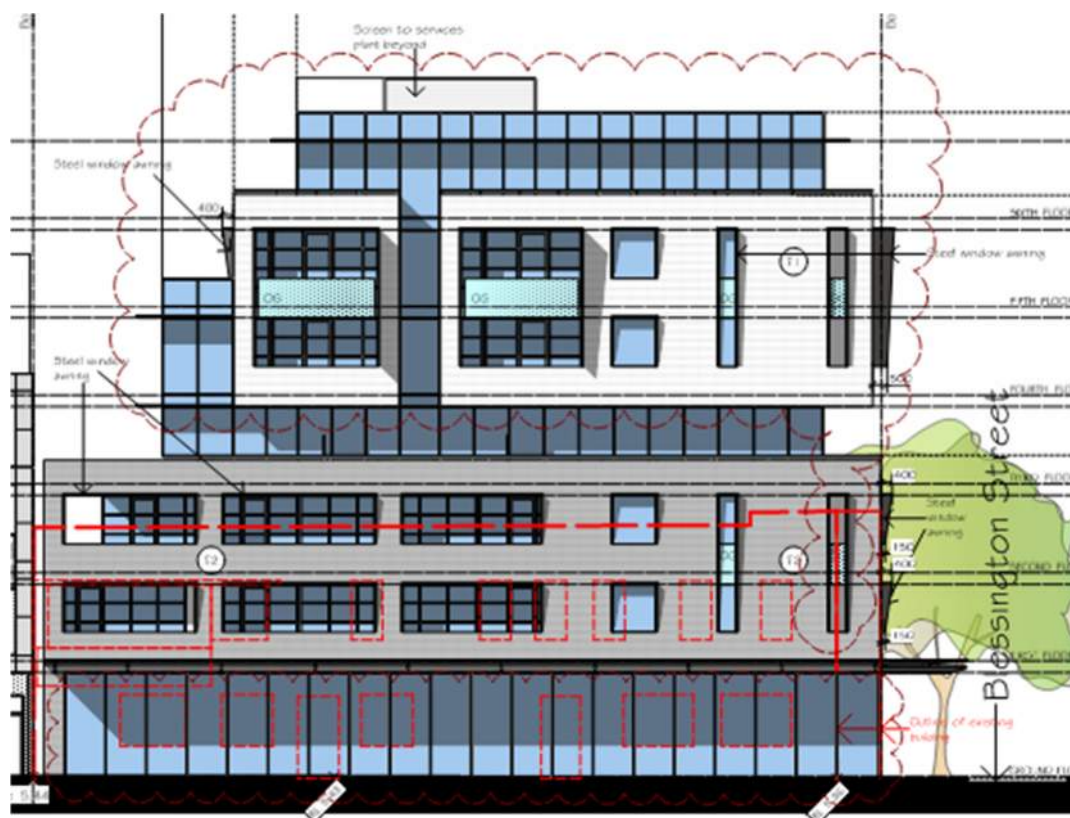


Alice Maloney
Director: Planning
ratio:

1. Background

Planning Permit No. 665/2016 originally issued at the direction of the Tribunal¹ on 18 July 2017 and allowed the construction of a multi-level mixed use development (shops at ground floor, apartments above) with basement car parking.

Figure 1 Originally approved scheme – Brighton Road elevation



Source: Terry Harper Architects

The permit was further amended on 8 May 2018, via Planning Permit No. 665/2016/A.

Our client acquired the site in January 2020 and obtained a further amendment to the permit, via Planning Permit No. 665/2016/B which was approved on 18 May 2021. This included a complete change to the architectural response, through replacement of the previous project architect with the current architect, Bruce Henderson Architects.

¹ See *Van Der Linden Pty Ltd v Port Phillip CC* [2017] VCAT 1018

Figure 2 S72 revised scheme – render



Planning Permit No. 665/2016/B was subsequently corrected under Section 71 of the *Planning and Environment Act 1987* on 11 October 2021 and allows the following:

In accordance with the endorsed plans:

- *Construct a building or construct or carry out works under the C1Z;*
- *To use the land for a dwelling under the C1Z;*
- *Construct a building or construct or carry out works in the SBO2.*

Further amendments to the scheme have been made via secondary consent in order to improve the financial viability of the project and respond to prevailing market conditions. The most recent plans were endorsed on 4 January 2023.

The site was acquired by our client at the start to the COVID-19 pandemic and there have been significant challenges for all development, but particularly residential development with the cost of construction, since that time.

The most recent extension of time issued on 13 June 2024 and provides for a commencement expiry date of 18 May 2026.

2. Proposal

It is proposed to amend Planning Permit No. 665/2016/B as follows:

- Increase building height from 7 to 9 storeys.
- Convert use of apartments at Levels 1 and 2 to SDA Housing (community care accommodation), including 2 x OOA rooms for staff.
- Redesign basement and change car parking allocation, with overall reduction in car parking by 20 spaces.
- Façade redesign – retains curved windows to intersection, with introduction of additional varied colour treatments to elevations.

ITEM	ENDORSED PLANS	AMENDED PLANS	CHANGE
BUILDING HEIGHT	7 storeys ~25.8 metres	9 storeys ~29.15 metres	+2 storeys ~3.35 metres
DWELLINGS			
1BR	5	8	+3
2BR	10	21	+11
3BR	15	9	-6
SDA staff	0	2	+2
Total	30	40	+10
RETAIL	336.3sqm	315.4sqm	-20.9sqm
CAR PARKING			
Resident	52	32	-20
Shop / retail	3	3	0
Total	55	35	-20
BICYCLE PARKING	43	36	-7

Permit Preamble

Amend reference to land use from:

- *To use the land for a dwelling under the C1Z;*
- to
- *To use the land for a dwelling **and community care accommodation** under the C1Z;*
 - ***Reduction of car parking under Clause 52.06.***

Conditions

The proposed changes to conditions are sought:

CONDITION	ACTION	PROPOSED	RATIONALE
1 Preamble	Amend	Refer to current set of plans.	Architectural plans changed.
1(a)-(d), (g), (h)	Delete	N/A	Revised architectural design.
15	Amend	<p>Without the further written consent of the Responsible Authority, car parking for the approved development must be allocated on any Plan of Subdivision as follows:</p> <ul style="list-style-type: none"> — Not less than 1 space for each one and two bedroom dwelling . — Not less than 2 spaces for each three bedroom + dwelling. — At least 3 car spaces for the retail tenancies (combined). <p>No car parking to be allocated to community care accommodation.</p>	Reflects allocation of car parking and revised mix of dwellings, as detailed within Traffic Engineering Assessment prepared by Traffix Group dated 28 July 2025.
24	Amend	Ensure date of amendment pertains to that enabled by this Section 87A amendment.	Enables sufficient time for detailed design, marketing and tendering for builder to commence.

Plans

This includes the following detailed list of changes:

- Reconfigure basement levels and extend Basement 02 to match Basement 01. This results in:
 - Increase in spaces from 10 to 26 at Basement 02, of which 11 car spaces are within a car stacker in the southwestern corner of the floor.
 - Reduction in spaces from 44 to 8 at Basement 01.
 - Mezzanine level being deleted and incorporated into Basement 01.
 - Bike store relocated to Basement 01. Bicycle spaces reduced from 41 to 34 (32 at basement level and 2 at ground level to Brighton Road).
- Water (15,000L), detention (15,000L) and sewer pump tanks relocated to northeastern corner of Basement 02.
- Reconfigure building core and provide second lift and stairs (direct access to fire stairs from Brighton Road at ground floor deleted and redirected through lobby).
- Inclusion of substation at ground floor to Blessington Street frontage.
- Reduction of extent of canopy to Blessington Street and Brighton Road at ground floor.
- Area of retail 02 reduced from 180.7sqm to 159sqm, with entry to Blessington Street moved to northwestern corner of tenancy.
- Location of support pylons revised at ground floor to both street frontages to reflect changes to façade. Minimum width of 1.55 metres provided to pedestrian accessway to Blessington Street (previously 1.5m), with 1.5 metres maintained to Brighton Street.
- Waste room and amenities at ground floor swapped locations, with waste room relocated to western side of ground floor and amenities located centrally.
- Apartment levels reconfigured to reflect revised façade design and internal layouts, with changes to building envelope indicated on floor plans (endorsed floor plans indicated in blue dashed line). While minimum setbacks do not change at Levels 1 and 2 (noting the building has elements with zero setbacks to the three street frontages), the position of balconies has varied, with setbacks increased or decreased respectively. Apartment 1.01 in the southwestern corner at Level 1 has reduced setbacks and is built to the west and south boundaries.

Figure 3: Proposed 3D Render of Amended Development from Brighton Road



Figure 4: Proposed 3D Render of Amended Development looking south on Brighton Road



3. Planning Controls

3.1 ZONING

The subject site continues to be located within the **Commercial 1 Zone**, pursuant to Clause 34.01 of the Port Phillip Planning Scheme.

A permit is required under Clause 34.01-1 for use of land for community care accommodation given:

- The (shared) frontage at ground floor to Brighton Road exceeds 2 metres; and
- It would otherwise meet the remaining requirements of Clause 52.22-2.

A permit is required for buildings and works under Clause 34.01-4.

Pursuant to Clause 34.01-4, Clause 58 does not apply given the planning permit application was lodged prior to the approval date of Amendment VC136 (13 April 2017).

3.2 OVERLAYS

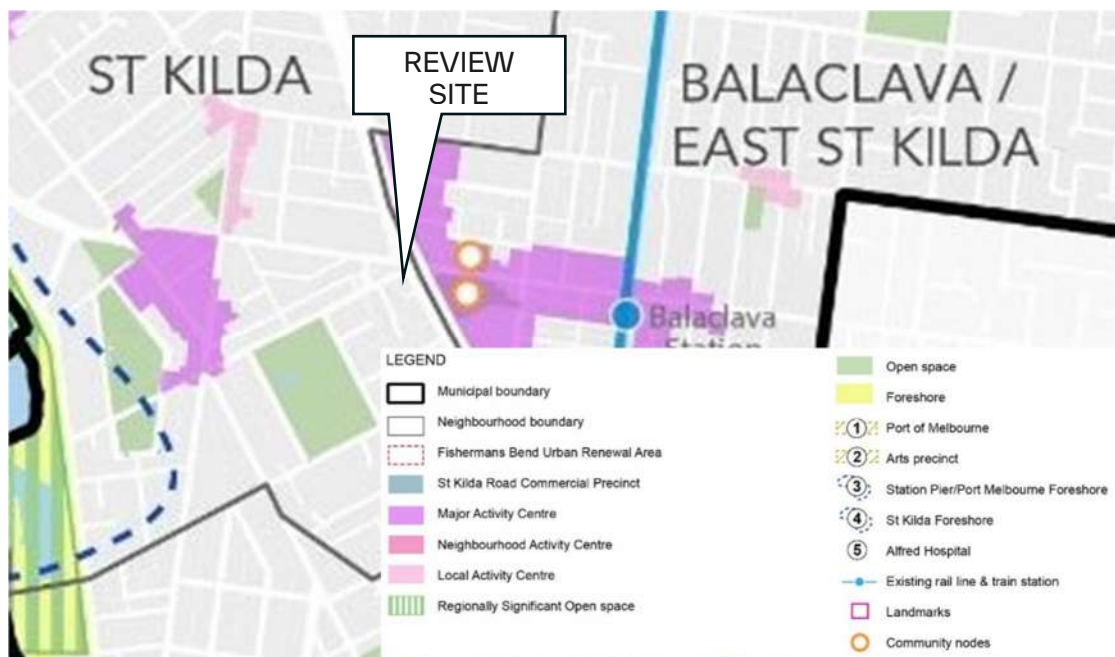
The subject site continues to be affected by **Special Building Overlay**, Schedule 2 (Port Phillip City Council Local Drain) pursuant to Clause 44.05. As no changes are proposed to the floor levels at ground floor, the development continues to appropriately consider the urban drainage system.

3.3 MUNICIPAL PLANNING STRATEGY (MPS)

Relevant clauses include:

- **Clause 02.01-2** (Housing Profile): identifies that access to affordable housing for very low and low income working households is limited. Council is committed to maintaining the 2015 level of social housing stock.

Figure 5: Context Plan



– **Clause 02.02** (Vision) includes the following relevant objectives:

- *That produces low greenhouse gas emissions, is resilient to climate change and maximises use of environmentally sustainable modes of travel.*
- *That is liveable, with well-designed buildings that contribute to safe, lively, high amenity places with public spaces that are safe and inviting places for people to enjoy.*
- *Of diverse and distinctive neighbourhoods where well-designed new development is integrated with, and enhances our valued heritage and character and the beauty of our neighbourhoods.*
- *That is easy to get around, with 10-minute neighbourhoods that give locals access to shops, community spaces and a strong sense of place.*
- *With a range of affordable, accessible and diverse housing types to meet the needs of the population and is supported by a range of community facilities and services.*

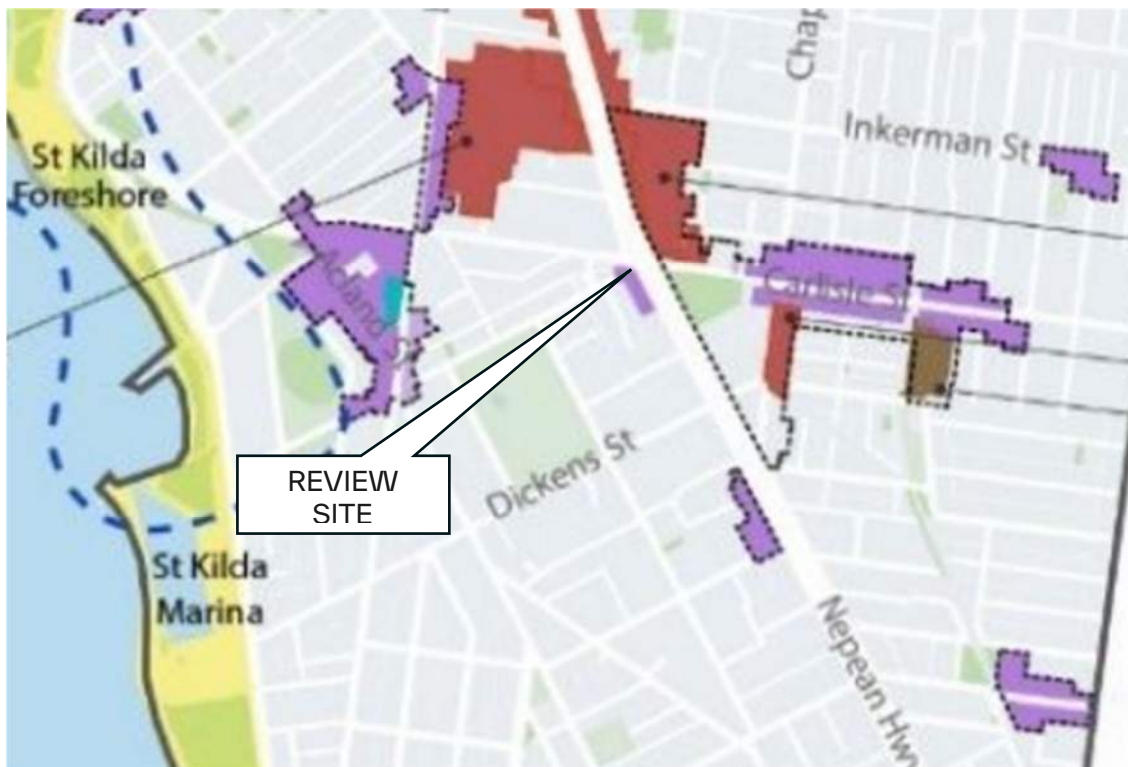
– **Clause 02.03-1** (Settlement) identifies that the St Kilda (Fitzroy / Acland Streets) and Balaclava (Carlisle Street) Major Activity Centres are the closest to the review site. Relative to the St Kilda Neighbourhood, it notes that the neighbourhood contains an eclectic mix of architectural styles, eras and building typologies, with a 10% population growth forecast by 2031 – predominantly in the St Kilda Road South Precinct. Relevant to this neighbourhood:

- *Retaining the unique heritage, character and generally low-rise built form of the established residential areas.*
- *Improving the liveability of the St Kilda Road South Precinct and strengthening its sense of place as it transitions to increased residential densities.*

– **Clause 02.03-3** (Environmental Risks and Amenity) identifies the importance of incorporating environmentally sustainable design and water sensitive urban design.

- **Clause 02.03-4** (Built Environment and Heritage) states that development needs to respond to the context of the area and positively contribute to the public realm. The character of areas planned for substantial growth will significantly change, noting parts of Major Activity Centres and along St Kilda Road. Development of these areas needs to be managed to achieve a high-quality public realm to support the new higher-density mixed use environment, while development within and adjoining established residential areas and lower-order activity centres needs to be managed to ensure the existing neighbourhood character is not eroded.
- **Clause 02.03-5** (Housing) includes the following relevant objectives:
 - *Providing significant opportunities for housing growth within designated strategic locations such as FBURA, that offer greatest accessibility to shops, services and public transport.*
 - *Increasing residential densities within existing activity centres where the intensity and scale are appropriate to their scale, character and heritage values and does not detract from the centres' economic capacity.*
 - *Providing affordable housing for very low, low and moderate-income households in locations across the municipality, including strategic redevelopment sites, activity centres and Fishermans Bend.*
 - *Providing a diverse range of affordable housing types, such as supported social housing, social (public and community) housing, and private affordable housing that address local housing need.*
 - *Providing a diverse range of accessible, visitable and adaptable housing that meet the needs of the community.*
- **Clause 02.03-7** (Transport) encourages prioritising and facilitating sustainable transport modes, including active transport and public transport, over private vehicle use.
- **Clause 02.04** (Strategic Framework Plans) includes plans pertaining to economic development, strategic projects, pedestrian and bicycle network framework, public transport network framework and open space and environment framework. The economic development plans identifies the review site as being within a retail strip as indicated below:

Figure 6: Economic Development Plan



3.4 PLANNING POLICY FRAMEWORK (PPF)

Relevant clauses include:

- Clause 11.01-1S (Settlement)
- Clause 11.01-1R (Settlement – Metropolitan Melbourne)
- Clause 11.03-1S (Activity Centres)
- Clause 11.03-1R (Activity Centres – Metropolitan Melbourne)
- Clause 11.03-1L-01 (Activity Centres) seeks to *maintain and strengthen a network of distinct, diverse, and viable activity centres that facilitate appropriate housing and economic growth*. Relevant strategies include:
 - Ensure land use supports the strategic role and function of the activity centre.
 - Support land uses that contribute to the provision of goods and services for the local community in Major Activity Centres and Neighbourhood Activity Centres.
 - Intensify retail development within existing retail strips (Commercial 1 Zone), subject to heritage and character considerations.
 - Support development within activity centres that positively contributes to the built form character of the centre whilst conserving heritage buildings, and streetscapes, and the distinctive and valued character of the traditional retail strips.
 - Encourage greater consistency in land use and built form intensity at the interface of activity centres and surrounding residential areas, including a transition in building scale to adjoining low-rise development.

We note that the review site is not located within an identified activity centre, with regard to Clause 11.03-1L-03 (Carlisle Street Major Activity Centre), Clause 11.03-1L-06 (St Kilda Major Activity Centre) or any other identified local or neighbourhood activity centres as detailed at Clause 11.03-1L-04.

- **Clause 11.03-6L-03** (St Kilda Road South) applies to land along St Kilda Road, between St Kilda Junction to the north and Carlisle Street to the south, meaning that the review site is not within land affected by the policy². The objective of this policy is:

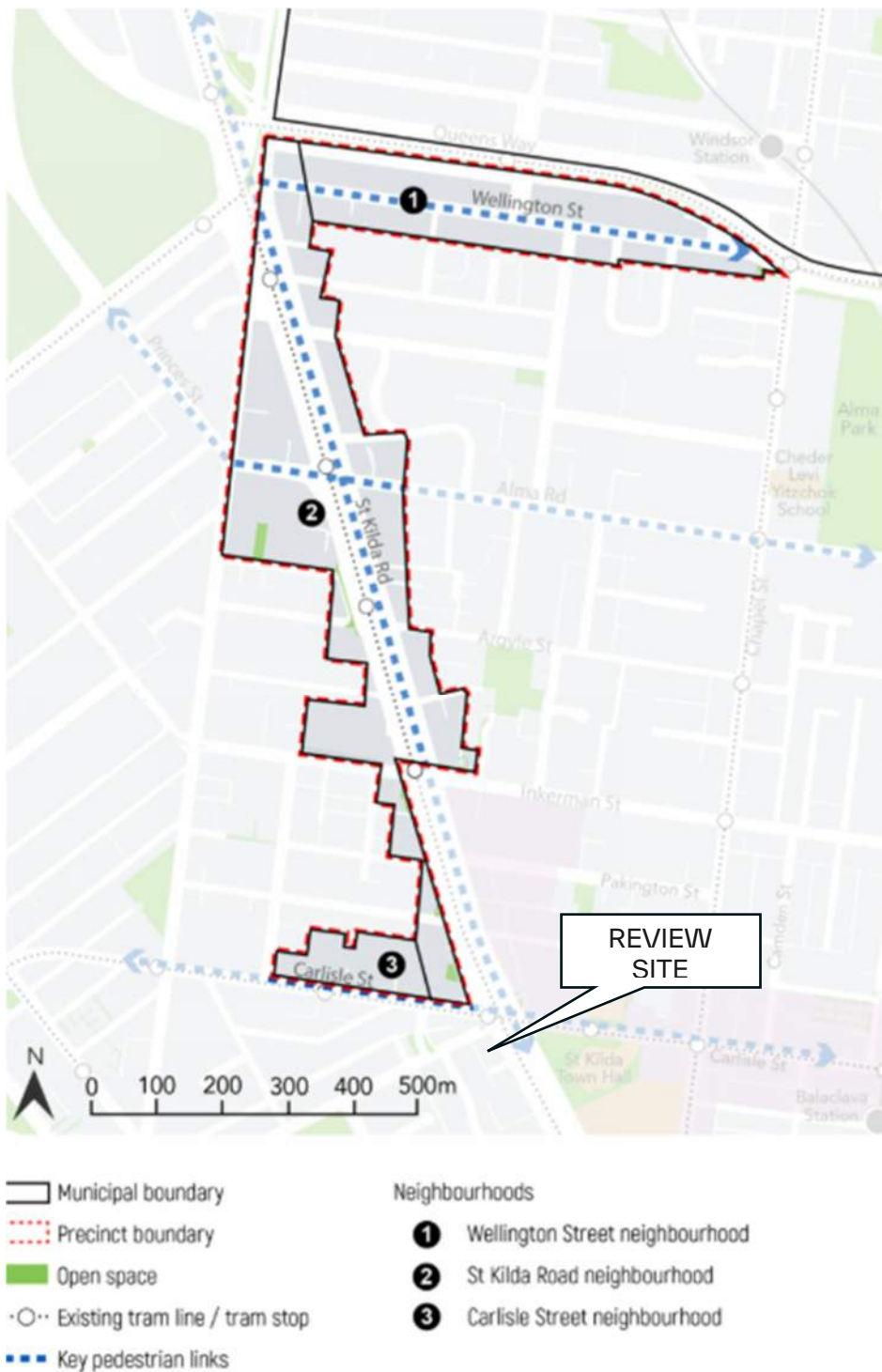
To strengthen the St Kilda Road South Precinct's image, liveability and sense of place as it transitions to increased residential uses.

While not applicable, relevant policies include:

- *Create a diverse series of neighbourhoods with a strong sense of place, community and local identity.*
- *Encourage land uses that create activity nodes and community focal points for local residents and workers.*
- *Provide additional opportunities for housing growth throughout the Precinct due to its proximity to public transport and activity centres.*
- *Improve the amenity and function of St Kilda Road as a key pedestrian spine by providing active land use 'edges' at street level throughout commercial and mixed use areas.*
- *Maintain solar access to key pedestrian streets and green links, including St Kilda Road, Wellington Street, Alma Road and Carlisle Street.*
- *Ensure the interface between commercial and residential uses is well designed and non-residential uses are managed to protect residential amenity.*

² Land within the St Kilda Road South Precinct is affected by Design and Development Overlay, Schedules 27 (St Kilda Road South – Western Side), Schedule 34 (St Kilda Road South – St Kilda Junction and Eastern Side) and 36 (St Kilda Road South – St Kilda Hill).

Figure 7: St Kilda Road South Precinct



- **Clause 13.03-1S** (Floodplains)
- **Clause 13.05-1S** (Noise Management)
- **Clause 13.07-1S** (Land Use Compatibility)

- **Clause 13.07-1L-03** (Interfaces and amenity) applies to non-residential use and development and residential use and development on land, inter alia, in a Commercial 1 Zone and on land adjacent to a main road. Relevant objectives include:
 - *To manage amenity conflicts between commercial, industrial and residential activities while maintaining the viability of commercial or industrial activities.*
 - *To minimise the detrimental impacts of non-residential uses on residential amenity.*
 - *To ensure that non-residential uses in residential zones are compatible with the surrounding residential context and serve the local community.*
- **Clause 15.01-1S** (Urban Design)
- **Clause 15.01-1R** (Urban Design – Metropolitan Melbourne)
- **Clause 15.01-1L-02** (Urban Design) details considerations in relation to Landmarks, views and vistas; Building form; Public Realm; Street level frontages; Landscape, Foreshore environs; Streets and laneways; and Large sites.
- **Clause 15.01-2S** (Building Design)
- **Clause 15.01-2L-01** (Building Design) applies to non-residential development and multi-unit residential development where Clause 55 does not apply (five storeys or more).
- **Clause 15.01-2L-02** (Environmentally sustainable development) aims to achieve best practice environmentally sustainable development. We refer to the amended SMP prepared by GIW Environmental Solutions.
- **Clause 15.01-2L-03** (Urban art) this policy is dealt with via Condition 18.
- **Clause 16.01-1S** (Housing supply)
- **Clause 16.01-1R** (Housing supply – Metropolitan Melbourne)
- **Clause 16.01-1L-01** (Housing diversity) includes the following strategies:
 - *Provide a mix of housing types that:*
 - *Includes a mix of dwelling sizes.*
 - *Are accessible and adaptable for people of all abilities and for older persons (to enable ‘aging in place’).*
 - *Support flexible housing design and emerging housing models that enable adaptation as household needs change over time and support people to work from home.*
 - *Encourage design that delivers a range of housing types suitable for households with children through:*
 - *The development of mid-rise housing with access to private open space.*
 - *Living room sizes that exceed minimum requirements.*
 - *Access to outdoor communal green space including children’s play spaces on ground level, podium levels or roof tops and locating some dwellings to achieve direct visual access to those play spaces.*
 - *Providing children’s communal active indoor play or recreation space as part of indoor communal spaces.*
 - *Locating sufficient storage areas in areas with easy access to dwellings.*

– **Clause 16.01-1L-02** (Location of residential development) seeks:

To direct housing growth to designated locations that have the greatest capacity for change, and that offer highest accessibility to public transport, shops, and social infrastructure while maintaining the heritage, neighbourhood character and amenity values of established residential areas that have limited potential for housing growth.

Relevant strategies include:

- *Direct the majority of new residential development to preferred housing growth areas to achieve:*
 - *Substantial residential growth within strategic sites and renewal precincts located proximate to a Major Activity Centre and/or the Principal Public Transport Network (PPTN), including the Fishermans Bend Urban Renewal Area, and that are to a height, scale and massing that respects the built form context surrounding the strategic site/renewal precinct.*
 - *Moderate residential growth within the established retail/commercial strips of Major Activity Centres, the Glen Huntly Road/Ormond Road Neighbourhood Activity Centre and the St Kilda Road Neighbourhood (St Kilda Road South Precinct) that is:*

Generally sited above or to the rear of retail/commercial premises, or as part of more intensive mixed-use developments on larger strategic redevelopment sites as identified in Structure Plans.

To an intensity and scale that keeps with the existing streetscape and heritage context, and does not compromise the economic function of the centre.
- *Provide for incremental residential growth through well designed medium density (2 to 3 storey) infill development:*
 - *On sites with frontage to a Main Road adjacent to the PPTN and where there is an existing diverse neighbourhood character capable of accommodating change.*
 - *Within areas proximate to a Major Activity Centre, and where there is an existing diverse neighbourhood character capable of accommodating change.*
 - *On sites fronting Ormond Road and Glen Huntly Road, proximate to the Elwood Junction and Elwood Village activity centres.*
 - *Along Main and Collector roads that are already characterised by medium-density (2 to 3 storey) development.*
 - *Heritage areas close to the St Kilda Activity Centre that are generally characterised by existing three storey development.*
- *Ensure major residential development delivers a positive social benefit to the community.*

– **Clause 16.01-2S** (Housing Affordability)

– **Clause 16.01-2L** (Affordable housing) includes the following relevant strategies:

- *Locate affordable and social housing within walking distance from the Principal Public Transport Network (PPTN) or Major Activity Centre or Neighbourhood Activity Centre.*

- *Encourage a broad spectrum of affordable housing through innovative models including affordable rental housing (community housing and Build to Rent) and affordable home ownership (Shared Equity Housing, Community Land Trusts, Rent to Buy).*
- *Provide affordable housing with a priority for moderate income households.*
- *Encourage well-designed affordable and social housing within development that:*
 - *Integrates with the remainder of the development and is externally indistinguishable from other dwellings/development.*
 - *Reflects the overall dwelling composition of the building.*
 - *Has internal layouts identical to other comparable dwellings within the building.*
- **Clause 16.01-4S** (Community care accommodation)
- **Clause 16.01-4L** (Community care accommodation) includes the following strategies:
 - *Encourage appropriately located community care accommodation with either onsite support services and staffing or external support services.*
 - *Facilitate delivery of supported social housing models, including Common Ground and Youth Foyer Models, or Community Care Units with onsite support facilities.*
- **Clause 18.01-1S** (Land use and transport integration)
- **Clause 18.01-1L** (Land use and transport integration) supports development that promotes alternative modes of transport and reduced reliance of private vehicles.
- **Clause 18.01-3S** (Sustainable and safe transport)
- **Clause 18.01-3R** (Sustainable and safe transport – Metropolitan Melbourne)
- **Clause 18.01-3L** (Sustainable and safe transport in Port Phillip)
- **Clause 18.02-1S** (Walking)
- **Clause 18.02-2S** (Cycling)
- **Clause 18.02-3S** (Public Transport)
- **Clause 18.02-4S** (Roads)
- **Clause 18.02-4L-01** (Car parking) includes the following strategies:
 - *Locate and design off-street car parking facilities to be flexible and adaptable for future alternative uses.*
 - *Support car parking to be contained within a building or located at the rear of a building and not visible from the street.*
 - *Limit vehicle access points to car parking facilities.*
 - *Encourage use of laneways and discourage multiple crossovers that result in a loss of on-street car parking or interruption to footpaths and the bicycle network.*
- **Clause 18.02-4L-02** (Loading facilities)
- **Clause 19.03-3S** (Integrated water management)
- **Clause 19.03-3L** (Stormwater management (water sensitive urban design))

3.5 PARTICULAR AND GENERAL PROVISIONS

- **Clause 52.06** (Car Parking) car parking for the residential apartments and retail tenancies continues to be provided in accordance with Clause 52.06 (and amended Condition 15). A permit is required for a waiver of car parking associated with the SDA housing / community care accommodation on Levels 1 and 2. We refer to the Traffic Engineering Assessment prepared by Traffix Group further in this regard.
- **Clause 52.22** (Community Care Accommodation) applies to the use and development of land for community care accommodation. Pursuant to Clause 52.22-2, while the development does not meet the C1Z Section 1 land use requirement for any frontage at ground floor being less than 2 metres (noting the shared residential lobby is 4.52 metres wide to Brighton Road), we note the other tests are met, being:
 - The use will be funded by, or carried out by, a registered National Disability Insurance Scheme (NDIS) provider given Levels 1 and 2 are capable of being certified to the NDIS Specialist Disability Accommodation Design Standard by an accredited third party NDIS Specialist Disability Accommodation assessor. Correspondence from Project Friday dated 5 August 2025 confirms they will be the registered NDIS provider for this project. The SDA letter of intent dated 20 May 2025 prepared by Lume Access confirms these apartments will be capable of SDA Certification under the High Physical Support design category.
 - No more than 20 clients are accommodated, not including staff (noting there are 15 SDA apartments at Levels 1 and 2).
 - No more than 5 persons at any one time who are not accommodated on the land may access support services provided on the land.
- **Clause 52.34** (Bicycle Parking) while the amended plans result in a reduction of bicycle parking, bicycle parking is still provided in excess of the requirements of this clause.
- **Clause 53.18** (Stormwater Management in Urban Development) we refer to the amended SMP prepared by GIW Environmental Services.

4. Planning Considerations

4.1 Use

The amended scheme seeks to convert the apartments at Levels 1 and 2 from dwellings to SDA housing (community care accommodation). The SDA Consultant Advice Notice by Lume Access dated 20 May 2025 confirms that the apartments will be capable of achieving High Physical Support design category SDA certification. Project Friday are also confirmed as the NDIS-registered SDA provider associated with this project.

Given the use remains residential in nature, it provides an appropriate response to Clause 16.01-1L-01 (Housing Diversity) given it provides a mix of dwelling sizes (one – three bedroom apartments, albeit all of the SDA apartment are one or two bedrooms) that are accessible and adaptable. As above, the SDA apartments are capable of achieving High Physical Support certification. The review site's location proximate to the PPTN and activity centres makes it highly accessible for visitors and staff.

Clauses 02.03-5, 16.01-1L-01, 16.01-2L and 16.01-4L all encourage diverse housing in well-serviced locations. The provision of SDA housing in this location is therefore strongly supported by the MPS and PPF.

4.2 Built Form

The previous Tribunal decision³ found:

There was agreement between the Parties that the review site is an excellent site for intensive redevelopment. The review site is located with access to all services and facilities including public transport and the Carlisle Street and Acland Street activity centres.

The main considerations continue to be whether the additional two levels can be supported and whether the architectural response is acceptable, having regard to the endorsed plans and the Port Phillip Planning Scheme.

As detailed at paragraph 8 of that decision, the Port Phillip Planning Scheme provides limited specific guidance about what is anticipated for the review site, noting:

- Carlisle Street Major Activity Centre is located east of Brighton Road (and affected by DDO21).
- The St Kilda Road South Precinct is located north of Carlisle Street (Amendment C122 was underway at the time of the original hearing, with DDO27, DDO34 and DDO36 now in place as of 18 October 2018).
- Amendment C203 was approved on 23 June 2023 and updated the Port Phillip Planning Scheme to replace the Local Planning Policy Framework (LPPF) with the new structure detailed by Amendment VC148. Paragraphs 10-13 discuss the classification of residential growth areas at Clause 21.04. These areas are now defined at Clause 16.01-1L-02 and we submit that the review site is an area where substantial residential growth should occur given:
 - It is a strategic site (noting strategic sites do not appear to be defined in the MPS, or mapping at Clause 02.04).

³ Van Der Linden Pty Ltd v Port Phillip CC [2017] VCAT 1018

- It is located proximate to a Major Activity Centre (Carlisle Street MAC and St Kilda MAC).
- It abuts the PPTN.
- It is of a height, scale and massing that will respect the built form context surrounding the site (as detailed below, with assessments against Clauses 15.01-1L-02 and 15.01-2L-01).

We do not consider the site meets the definition for moderate or incremental residential growth given the Tribunal's previous findings.

Clause 15.01-1L-02 (Urban design)

An assessment of the amended proposal against this policy is provided below:

Landmarks, views and vistas

- The development will not adversely impact any views to identified key landmarks.
- The development will protect and enhance the view corridor along St Kilda Road / Brighton Road through provision of a high quality development.
- Development will accentuate a corner site, but will not impact the visual prominence of surrounding key landmarks, including St Kilda Town Hall on the opposite side of Brighton Road.
- The development will not impact any memorials or monuments.

Building form

- The development provides for high quality urban design and architecture that will contribute to the amenity and vitality of the area. While it does not respond to the prevailing neighbourhood character, this is not warranted by virtue of the existing approved design. However, use of stepped form to the residential neighbourhood to the west and the 'deep red ochre' finish to part of the north and western elevations references use of brickwork in the residential neighbourhood.
- The introduction of varied colour to the north and east elevations, while maintaining the feature curved treatment to the intersection, provides a high quality building which enhances this prominent location. While two additional levels are proposed as part of this amendment, the overall building height only increases by 3.35 metres due to the former prominent parapet.

As detailed in the following image, the Brighton Road treatment utilises 'dark green' finishes to transition the built form to the existing apartment building at No. 7 Brighton Road.

Figure 8: Brighton Road render



Public realm

- The building provides visual interest to both street frontages, noting its location on a prominent intersection. While upper levels have not been recessed relative to the intersection, this is consistent with the endorsed plans and enables the building to delineate and hold this prominent location.
- The building has been designed to maintain 1.5 metre accessible widths at ground level and provides safe, inclusive, functional, legible and dignified access.
- Services continue to be appropriately integrated into the building design.
- Weather protection continues to be provided, with retail tenancies set back from both street frontages and additional canopies provided.
- Communal areas are limited to the residential lobby and corridors and basement car park, however will provide appropriate opportunities for social interaction.
- Lighting in the public realm will be provided to the undercroft of the ground floor / retail interface.
- Building services and equipment continues to be located consistent with the endorsed plans.
- The development will minimise any micro-climatic impacts associated with overshadowing of the public realm or wind tunnelling.
- Visual bulk has been appropriately minimised, with a high quality architectural response proposed. While the policy guidelines suggest buildings immediately adjacent to public spaces, including footpaths, should have maximum building heights of 3 storeys and be set back above that (unless otherwise specified in a DDO), we note the existing approval already provides a precedent in this regard.
- The development will not imply private ownership of public spaces, or impede access to pedestrians.

- While the canopy to Brighton Road slightly exceeds the 2.5 metre deep projection nominated, it provides weather-protection, aligns with the width of the footpath and enhances building identification for the residential lobby.

Street level frontages

- There is no substantial change to the building frontage at footpath level, which will continue to support visual interest, transparency, interaction with the street, safety, shelter and convenience.
- No significant change is proposed to the pedestrian entry from Brighton Road.
- Passive surveillance continues to be provided from windows and balconies at lower levels of the building to the public realm.
- The proposed development continues to define the corner at the intersection through addressing both street frontages and the surrounding context.

Landscape

- Landscaping continues to be provided to planter boxes at upper levels, consistent with the endorsed scheme.

Streets and laneways

- No substantial changes are proposed to the interfaces with the two street frontages and the laneway relative to the endorsed plans.

Clause 15.01-2L-01 (Building Design)

An assessment of the amended proposal against this policy is provided below:

Landscape

- Landscaping continues to be provided to planter boxes at upper levels, consistent with the endorsed scheme.

Pedestrian and cyclist access

- No change is proposed to pedestrian or cyclist access to the development relative to the endorsed plans.

Carparking and vehicle access

- No change is proposed to car parking / vehicle access to the development relative to the endorsed plans. It continues to be provided via the laneway.

Sunlight access to public open space

- The development will not result in overshadowing to any key public open space areas.

Private open space and communal areas

- No communal open space is provided as part of this scheme, consistent with the endorsed plans.
- Balconies are predominantly sited to the street frontages and laneway, to provide outlook and solar access for residents, consistent with the endorsed plans.

Summary

Given the above, the additional building height is considered appropriate given:

- The elevations maintain a high quality architectural response, with curved window framing to the intersection, transitioning into distinctly different architectural treatments to the west (Blessington Street) and south (Brighton Road). This is achieved through a simplified built form with simple fenestration and strong use of colour, with deep red ochre utilised to the Blessington Street and western elevations, which references traditional dwelling stock in the residential area to the west. Use of dark green to the Brighton Road frontage and southern elevation creates visual interest within this corridor.
- The two additional storeys to Blessington Street utilise open, unenclosed balconies with metal balustrading to create a sense to openness which erodes built form at this residential interface.
- The increase in building height accommodates two levels of SDA housing, which is strongly supported by planning policy and provides a net community benefit.

4.3 Amenity

Internal Amenity

The development has the benefit of endorsed plans under Planning Permit No. 665/2016/B and is exempt from Clause 58. The amended scheme will continue to provide appropriate amenity for future residents noting:

- All apartments are provided with open plan living / dining / kitchen areas with direct access to balconies.
- All habitable rooms are appropriately dimensioned to achieve functional areas that meet the needs of residents. While some room widths are less than the dimensions nominated at Standard D26, rooms have been designed to be usable, functional and provide appropriate amenity. All bedrooms are provided with wardrobes. Room depths are less than the 9 metres nominated at Standard D27.
- While no communal open space is provided, all apartments are provided with balconies with areas that generally comply with Standard D20 of Clause 58⁴. Although some of the minimum dimensions do not meet the requirements under that standard (Table D8), all balconies are appropriately dimensioned to provide for the reasonable recreation and service needs of future residents. Apartment 1.09 does not meet the minimum area, but is associated with an On-site Overnight Assistance (OOA) apartment for support staff. Given the nature of this apartment, this is not considered unreasonable.
- 11 of the 79 proposed bedrooms (13.9%) are provided with saddleback arrangements. This compares favourably with the endorsed scheme, which has 13 of the approved 70 bedrooms (18.6%) with saddleback arrangements. Of the 11 saddleback bedrooms, all achieve compliance with Standard D28. This is also an improved outcome relative to the endorsed scheme, where many of the saddleback 'corridors' are narrow and long and do not meet the dimensional requirements. The SMP prepared by GIW Environmental Services also confirms the development achieves best practice daylight levels.

⁴ Apartments 4.02 and 5.02 are provided with 9.5sqm instead of 12sqm given they are three bedroom apartments.

- Over 40% of apartments (68%) achieve natural ventilation in accordance with Standard D29.
- Lift and stair access is provided to all levels of the building, with a secure lobby provided at ground floor to the Brighton Road frontage. Natural ventilation / daylighting is provided to corridors at Level 3 and above, which is consistent with the endorsed scheme (no direct natural ventilation / daylight at Levels 1 and 2).
- Acoustic advice from Acoustic Logic dated 24 July 2025 confirms that the acoustic treatment recommendations detailed in the endorsed acoustic report (16 September 2021) are still relevant and will ensure internal traffic noise level criteria is achieved.
- 40 x storage cages are provided at basement levels with a minimum size of 5m³, with one able to be provided per apartment (inclusive of SDA housing). This is an improvement on the endorsed plans, where not all apartments are provided with storage cages.
- Residents at Levels 3-8 are provided with car parking at basement levels in accordance with Clause 52.06. Residents of the SDA housing at Levels 1 and 2 are not provided with allocated car parking given that these apartments are for residents requiring High Physical Support.
- Relative to Clause 13.07-1L-03 (Interfaces and amenity), we note that there is no change to the retail uses at ground floor having regard to the apartments above. Given this, the amended plans have appropriate regard to the objectives of this clause. Additionally, the endorsed acoustic report and subsequent correspondence from Acoustic Logic provide requirements for glazing treatments to ensure noise impacts to future residents are acceptable given the proximity to Brighton Road.

External Amenity

The main residential interfaces include the apartments at No. 7 Brighton Road to the south and residential properties to the west.

Clause 13.07-1L-03 (Interfaces and amenity) requires the consideration of non-residential uses on residential amenity. Given there is no change to the uses proposed at ground floor and the architectural treatment of the loading area / back of house remains consistent with the endorsed plans, the amended plans will not result in amenity impacts on surrounding properties in terms of land use.

We have considered visual bulk, overlooking and overshadowing.

VISUAL BULK

As outlined in the previous section, the development provides an appropriate response relative to its street frontages / residential interface to the west. The amended plans show the envelope of the endorsed scheme, highlighting locations where setbacks have been reduced and increased respectively. Level 2 and above typically adopt identical setbacks to the endorsed plans to the west and south. The main differences include:

- **West:** reduced setbacks to the southwestern corner / laneway abuttal. Former apartment 1.10 was set back 2.25 metres, with balcony built to the laneway (and at Level 2 above). Proposed apartment 1.01 is now built to the boundary, with the balcony to apartment 2.01 above also built to the boundary. As this component of the building is lower than the two storey section at No. 7 Brighton Road abutting to the south and opposite a two storey rear extension to No. 79 Blessington Street to the west, it is not considered to be visually bulky. With a wall height of approximately 6.8 metres, daylight to existing windows (under Clause 55 – not applicable in this instance) would

require a 3.4 metre setback. As the laneway is approximately 3.4 metres wide in this location, the setback requirement is generally met.

Relative to the remainder of this boundary, the location of balconies and built form to the western boundary is revised slightly at Level 1. Importantly, balconies are still sited opposite the cut out where habitable room windows are located to No.79 Blessington Street, with a cut out provided in this location at Level 2. The upper levels are generally consistent with the endorsed scheme in terms of balcony and built form locations and will continue to appear visually interesting.

- **South:** part of apartment 1.01 and the balcony for apartment 1.10 are now proposed to be built to the southern boundary. While the floorplans suggest that these elements overlap with apartments to the south with north-facing balconies, the sections (4 and 4A on TP-404) detail that the proposed development has a lower first floor level than the existing apartments to the south. Accordingly, the proposed extension of built form and new balcony in this area will not impact these north-facing balconies, which are provided with full height bamboo-screening to the common boundary, as shown in Photo 1, which will further filter views between the two properties.

The floor plans indicate that setbacks at upper levels are within the approved envelope, with the exception of part of the balcony to apartment 2.01 which extends by approximately 1 metre to the east, slightly overlapping with a north-facing balcony. Given the full height screening to the balconies to the south at their first floor, views of this will be limited accordingly. The floor plans and sections indicate that there will be no impact on the apartment at second floor, given the extension is opposite a blank portion of wall and sits substantially lower.

Figure 9: Section 4A indicating interface between proposed development and apartments to the south

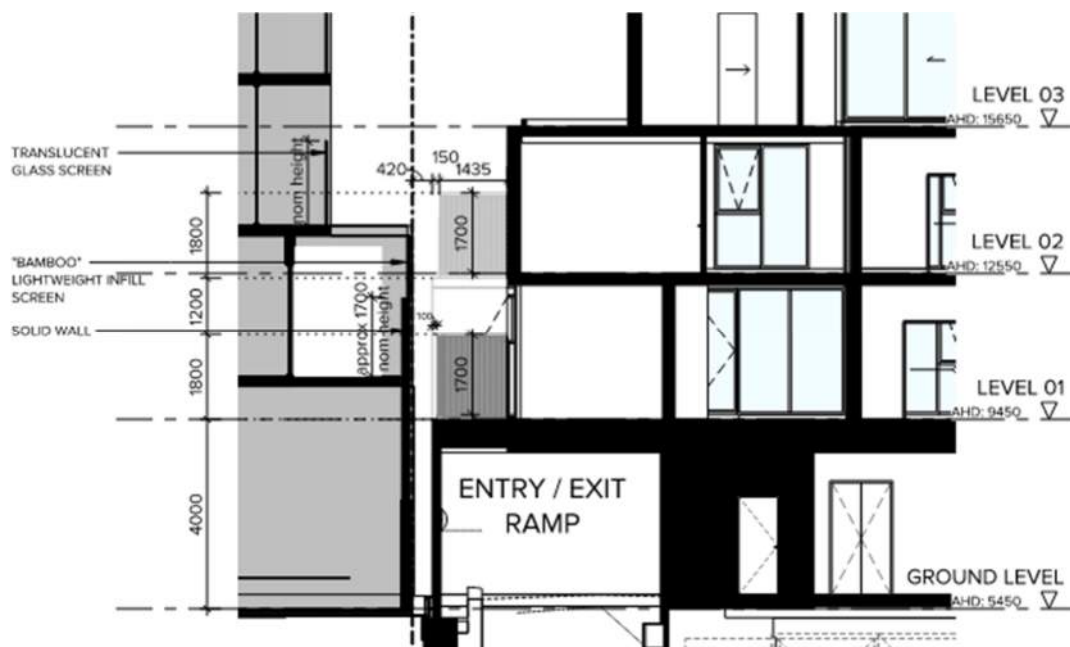


Photo 1: Northern elevation of No. 7 Brighton Road – including screening to first floor balconies



OVERLOOKING

There are no additional opportunities for overlooking from the amended scheme, noting:

- While apartment 1.01 now has windows closer to No. 79 Blessington Street, Clause 55 no longer contemplates overlooking from bedrooms.
- As outlined above, there is no additional overlooking to the south at Level 1, noting the differences in floor levels between the site and existing boundary screening to north-facing balconies at No. 7 Brighton Road. Accordingly, screening to apartment 1.10 has been removed.
- Additional screening is provided to the south and east sides of the balcony to apartment 2.01.
- Screening to the southern elevation at Levels 2-6 remains a combination of obscure glazing and privacy screening to a height of 1.7 metres above floor level, consistent with the endorsed scheme (apartment 4.06 in the southeast corner now has privacy screening to the balcony rather than obscure glazing).
- Screening to south-facing windows is also provide at Levels 7 and 8.

OVERSHADOWING

Shadow diagrams have been prepared which indicate the impact of overshadowing from the revised scheme. We note:

- No additional overshadowing occurs to No. 77 Blessington Street.
- Additional overshadowing occurs to No. 77A Blessington Street at 10am only, but is compliant with the new overshadowing tests at Clause 55.04-3, with over 50sqm unshaded at this time.
- No additional overshadowing to secluded private open space of No. 79 Blessington Street.
- No. 7 Brighton Street – no additional overshadowing to balconies.

Given the above, the revised layout and additional building height will not result in any additional amenity impacts to surrounding dwellings.

4.4 Car Parking / Traffic

The development seeks to reduce car parking by 20 car spaces, noting that all dwellings will be provided with car parking in accordance with Clause 52.06 and amended Condition 15. Car parking for the retail premises continues to be provided in accordance with Condition 15. A reduction of car parking is sought for the SDA housing (community care accommodation) at Levels 1 and 2. As detailed in the Traffic Engineering Assessment prepared by Traffix Group, a full reduction of car parking associated with the SDA housing is acceptable due to the nature of the use and proximity of the subject site to the PPTN.

Bicycle parking continues to be provided in excess of the Clause 52.34 requirements, with existing and proposed customer and visitor parking available along Brighton Road.

Waste collection remains from the western laneway, as detailed within the WMP prepared by RB Waste Consulting Service – consistent with the endorsed scheme.

4.5 Extension of Time

It is proposed to amend Condition 24 to provide a further two year extension to the planning permit. We note that Condition 24(a) states that the permit will expire if: *The development is not started within one year of the date of amendment of this permit.*

There is a Note on permit which states that:

The words “date of this permit” in condition 23⁵ refers to 18/7/17 being the date of planning permit 665/2016.

The permit has been extended a number of times, most recently on 13 June 2024, noting the current permit expiry date is 18 May 2026.

We consider the proposed extension of time appropriate having regard to the relevant “tests” within the Supreme Court decision Murrindindi SC v Kantor (1997) 18 AATR 285. We address the tests in turn:

- *Whether there has been a change of planning policy*
- *Whether the land owner is seeking to ‘warehouse’ the permit*
- *Any intervening circumstances as bearing upon grant or refusal*
- *The total elapse of time*
- *Whether the time limit originally imposed was adequate*
- *The economic burden imposed on the landowner by the permit*
- *The probability of a permit issuing should a fresh application be made*

These tests are neither mandatory, nor exhaustive. They do, however, offer useful guidance for the assessment of this application. We respond as follows:

- There have been minor changes to the planning controls relating to the subject land since the issue of the permit. Since the previous extension of time (13 June 2024), we note that none of the amendments (C, VC or GC) have any impact on this proposed amendment. Amendment C203port amended the content and layout of the Port Phillip

⁵ Condition 24 was added on 18 May 2021, so the note no longer references the correct permit condition.

Planning Scheme and was gazetted on 23 June 2023. This amendment replaced the Municipal Strategic Statement (MSS) and Local Planning Policy Framework (LPPF) at Clause 21 and Clause 22 with a Municipal Planning Strategy (MPS), local policies within the Planning Policy Framework (PPF) and selected local schedules, particular provisions, and operational provisions. It was in place at the time of the last extension of time request so was assessed by Council at that time.

- There have been other various amendments approved since the most recent extension of time, but none that significantly change the intent of policy.
 - Importantly, the site continues to be subject to the Commercial 1 Zone (C1Z) and the Special Building Overlay – Schedule 2 (SBO2).
 - Accordingly, while there have been changes to planning policy and controls, there has been nothing that would preclude contemplation of this extension of time.
- The owner is not seeking to ‘warehouse’ the permit, as there would be no advantage in doing so. The review site was purchased by the current owner in January 2020. A substantial redesign was approved by way of a Section 72 amendment on 18 May 2021, with a new architect involved. A further two secondary consent amendments have been sought and granted. These amendments, including this Section 87A application, establish the landowner’s desire to carry out this proposal (noting substantial holding costs associated with a vacant lot).
 - There are no intervening circumstances that would warrant a refusal of the extension of time request.
 - While the site has obtained a number of extensions of time, since our client purchased the site in January 2020 they have had to deal with the downturn in the market, delays associated with the COVID-19 pandemic and now substantial increases in construction costs and associated delays.
 - Whilst the time limit originally imposed by the permit would have been adequate for the commencement and completion of the development, for the reasons outlined above, our client has been unable to meet these.

In terms of timeframes for construction to commence, we are seeking a further two year extension. Should the S87A application be approved as proposed, the following timeframes would be required for construction to commence:

- Design Development and Documentation – approximately 4 months
- Tender Process – approximately 2 months
- Builder Engagement and Site Mobilisation Period – allow up to 8 months.

Accordingly, a further two year extension of time is considered reasonable in order to enable this important project to proceed.

5. Conclusion

The proposed amendments to Planning Permit No. 665/2016/B are considered appropriate because:

- The inclusion of SDA housing at Levels 1 and 2 provides further housing diversity and a form of affordable housing, noting residents will be part of the NDIS-program.
- The increase in building height, while two levels overall, only equates to a slight increase of ~3 metres due to the endorsed scheme's extended parapet design.
- The review site is located at a prominent intersection and the width of the Brighton Road corridor ensures the building height is able to be accommodated.
- The high quality architectural design prepared by Bruce Henderson Architects will provide an appropriate marker to this prominent intersection and enable a long-awaited redevelopment of the site. Use of varied treatments to the elevations with curved elements to the intersection and use of colours, creating visual interest and an appropriate transition to the scale of adjoining development.
- Apartment layouts continue to provide good amenity for future residents, noting the site benefits from transitional provisions relative to Clause 58.
- The development will not result in any unreasonable amenity impacts to neighbouring properties with regard to overlooking or overshadowing.
- The reduction of car parking associated with the SDA housing is not unreasonable having regard to the nature of the use.
- Granting a further two year extension to the planning permit will enable the detailed design, marketing and tendering / engagement of builder to occur within an appropriate timeframe.

Given the above, we consider that the permit should be amended accordingly.